

PUBLIC MEETING MINUTES

December 12, 2013

PUBLIC EMPLOYMENT RELATIONS BOARD

1031 18th Street
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:00 a.m.

Members Present

Anita I. Martinez, Chair
A. Eugene Huguenin, Member
Priscilla S. Winslow, Member
Eric R. Banks, Member

Staff Present

Suzanne Murphy, General Counsel (Excused)
Shawn Cloughesy, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Loretta van der Pol, Division Chief, State Mediation & Conciliation Service

Call to Order

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the November 14, 2013, Public Meeting. She reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in October. Those were PERB Decision Nos. 2334-H, 2355, 2336-M, 2337, 2338-S, 2339, 2340-H, 2341-M, and 2342, and Order Nos. Ad-402, Ad-403-M, Ad-404-H, IR-56a-H and IR-57-M. The following Requests for Injunctive Relief (IR Request) were filed and/or pending: No. 644 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*), the request was denied; No. 645 (*Regents of the University of California v. California Nurses Association*), the request was withdrawn; No. 646 (*Regents of the University of California v. American Federation of State, County and Municipal Employees, Local 3299*), the request was granted, in part; No. 647 (*Regents of the University of California v. American Federation of State, County and Municipal Employees, Local 3299*), the request was denied; No. 648 (*Service Employees International Union, Local 521 v. County of Fresno*), the request was denied; No. 649 (*Shasta County Superior Court v. United Public Employees of California, Local 792*), the request was withdrawn; No. 650 (*Shasta County Superior Court v. United Public Employees of California, Local 792*), the request was denied; and No. 651 (*American Federation of State, County and Municipal Employees, Council 36 et al. v. County of Los Angeles*), the request was denied.

Chair Martinez announced that a document containing a listing of the aforementioned decisions was available at the meeting, and that the decisions were available on PERB's website.

Motion: Motion by Member Huguenin and seconded by Member Banks, to close the November 14, 2013, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the November 14, 2013 Public Meeting. She then opened and called to order the December 12, 2013 Public Meeting.

Minutes

Chair Martinez stated that although noticed in the agenda for consideration at today's Public Meeting, due to the heavy workload of staff, the minutes for the November 14, 2013 Public Meeting would be again noticed and then considered for adoption at the February 13, 2014 Public Meeting.

Motion: Motion by Member Winslow and seconded by Member Huguenin, that the Board adopt the minutes for the October 10, 2013, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Comments From Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

A. Division of Administration Report

As a staff member who was retiring from PERB, Chief Administrative Officer Eileen Potter gave her last report and stated as follows:

Thank you Madame Chair and Members. Twenty years ago I started one of the best jobs of my career, the Chief Administrative Officer for the Public Employment Relations Board. We've been through so many highs and lows, budget ups and downs, growing pains, but we always persevered together as a team. I'm proud to have been part of all of it, and truly cherish the many wonderful friendships I have made along the way.

Twenty years ago I sat in this chair and gave my first administrative report and today I give you my last. I've enjoyed my time at PERB and believe we have accomplished so many good and positive things together. Sometimes with the leanest of resources but there was always a committed and dedicated group of employees pulling in a common direction to carry out PERB's mission. I wish you all the best as you work to navigate PERB's future path. Thank you, it's been a good run.

Board Members commended Ms. Potter as follows:

Chair Martinez: We have been friends for twenty years. You have done an outstanding job navigating the financial, personnel, and facilities issues that the Board has dealt with through the twenty years. I really appreciate everything that you have done for this Board. You've brought us to today with increasing staff, increasing space at regional offices, all of those things which aren't easy to do in a bureaucracy. You have had to fight to get resources and you have been a lion trying to do the best for the Agency. I just want to say, thank you very much. Thank you, thank you, your efforts are unbelievable.

Member Huguenin: I haven't known you for twenty years, although I was at PERB doing litigation on behalf of unions sometime before that. But, in the two years that I have known you I have come to respect you and the work that you do quietly and getting all of the resources that we can possibly garner and keeping as many of them as we can at year end, and giving us good advice about all the matters that are under your responsibility: facilities, employment, serving as personnel officer to the Board and its staff, certainly as to the Board counsel who for various reasons have to consult with you about their benefits packages and all that kind of stuff. So, thank you so much for all your help and for the help you have been to me personally. I really appreciate it. Wish you the best.

Member Winslow: I would echo [Member Huguenin's] comments. I am sad that I have not known you for twenty years. But Eileen, I think that you give public service and public employees a good name and that's about the highest compliment that I could pay for your competence and excellence and all of the other good things that you have done for this Agency. So, I really appreciate it and am very sad to see you go, but understand that the siren call of retirement could be a little more compelling than sloughing through the next five or twenty years here. Thank you.

Member Banks: A lot has already been said, but, I want to echo that I'm really sad to see you go. I've only known you nine months. But, I know the work you've done in terms of maneuvering the resources that the Agency needed during the toughest of times, finding a way when there just didn't seem like there was one. And, for me personally, after my

nine months of trying to get CalPERS to have my birthday correctly in documents, with one phone call you did it. I just think that is magical. So, despite my numerous pleadings to have you stay, I again also understand that you need to leave and I am going to miss you deeply.

B. Office of General Counsel Report

In General Counsel Suzanne Murphy's absence, Deputy General Counsel Wendi Ross reported that the monthly activity and litigation reports had been or would shortly be distributed to the Board for its review. From those reports Ms. Ross reported on the following information about activity since the Board's regular Public Meeting in October. With regard to monthly activities for the months of October and November 2013, a total of 353 new cases were filed with the Office of the General Counsel (GC Office) (up by 154 over the prior two-month period). During the same two-month period, 167 case investigations were completed (roughly equal to the number of dispositions in the prior two-month period—163—commendable given the continuing litigation caseload in the GC Office). In the latter regard, the GC Office was on pace for 228 litigation assignments for the current fiscal year as compared to 146 and 139, respectively, for the previous two fiscal years reported Ms. Ross. The increase of new case filings the past two months is largely attributable to a surge in unfair practice charges (UPC) by agency fee objectors represented by UPTE at the University of California which lead to a doubling of new UPCs (from 137 to 274 over the prior two-month period). As requested by the Board, the GC Office prepared a new chart showing the total number of UPCs filed alongside the number of UPC investigations completed each month with both activities broken down by Act. The new chart shows that disregarding the surge in new HEERA case filings, approximately 80 percent of all UPCs filed are split fairly even between MMBA and EERA, the balance was split evenly between HEERA and the Dills Act, and a few charges under the Trial Court Acts. Also during October and November, as compared to the prior two months, the GC Office saw an increase in the number of mediation requests (from 21 to 31), an equal number of factfinding requests (14), and a slight decrease in representation petitions (from 25 to 22), but that was still a near doubling of representation case activity over the past two years. Representation activity in the GC Office was currently on pace for 142-150 this fiscal year, as compared to 99 and 77, respectively, for the prior two fiscal years. The net result of all the foregoing, was that the GC Office's current investigation caseload continued to increase from a total of 468 at the end of June 2013, to 491 at the end of September 2013, and 670 at the end of November 2013.

As mentioned by the Chair, since the regular Public Meeting in October, the Board issued determinations in eight IR Requests as follows:

- *Liu v. Trustees of the California State University (East Bay)*, IR Request No. 644, filed on October 15, 2013. This request was summarily denied on October 23, 2013, pursuant to the Board's decision in *Trustees of the California University (East Bay)* (2013) PERB Order No. IR-56a-H.
- *Regents of the University of California v. California Nurses Association*, IR Request No. 645, filed on November 12, 2013. This request was withdrawn on November 16, 2013.

- *Regents of the University of California v. American Federation of State, County and Municipal Employees, Local 3299*, IR Request Nos. 646 and 647, filed on November 12, 2013. IR Request No. 646 was granted, in part, on November 18, 2013. IR Request No. 647 was denied on November 18, 2013.
- *Service Employees International Union, Local 521 v. County of Fresno*, IR Request No. 648, filed on November 15, 2013. This request was denied on November 22, 2013.
- *Shasta County Superior Court v. United Public Employees of California, Local 792*, IR Request Nos. 649 and 650, filed on November 14 and 19, 2013, respectively. IR Request No. 649 was withdrawn on November 15, 2013, and IR Request No. 650 was denied on November 25, 2013.
- *American Federation of State, County and Municipal Employees, Council 36 et al. v. County of Los Angeles*, IR Request No. 651. This request was denied on December 10, 2013, for lack of jurisdiction.

In terms of litigation relating to PERB since the regular Public Meeting in October, Ms. Ross stated that five new matters were filed by or against PERB as follows:

- *PERB v. City of Fremont/SEIU Local 1021*, California Court of Appeal Case No. A139991. PERB's appeal was filed on October 15, 2013, and the Agency's opening brief in that case is currently due on January 24, 2014.
- *Los Angeles Unified School District v. PERB/CSEA & Chapter 500*, California Court of Appeal Case No. B251986. LAUSD filed a petition for writ of extraordinary relief. PERB is currently preparing an administrative record in this matter.
- *County of Riverside v. PERB*, California Court of Appeal Case No. E060047. PERB is currently preparing an administrative record in this matter.
- *County of Riverside v. PERB/John Brewington*, Case No. E060017. Again, PERB is currently preparing an administrative record in this matter.
- *Children of Promise Academy v. PERB*, Case No. B252854. PERB is also preparing an administrative record in this matter.

As to case determinations since the regular Public Meeting in October, PERB received one final court ruling, stated Ms. Ross. On October 31, 2013, the California Court of Appeal in Case No. A13888 dismissed the City's appeal from the preliminary injunction issued by the Alameda Superior Court in the *PERB v. City of Fremont/SEIU Local 1021* litigation with prejudice.

Ms. Ross reported on personnel matters. She stated it was the GC Office's pleasure to announce that in January 2014, Jessica Kim would join PERB's Oakland Office as a Regional Attorney. Ms. Kim studied labor relations and labor law, not only at Stanford where she received a bachelor's degree, but also at the University of New York where she

received a juris doctorate. Prior to joining PERB, Ms. Kim had four years experience, both at the Department of Corrections and the Department of the Attorney General.

Member Winslow inquired whether the GC Office was fully staffed and Ms. Ross responded in the affirmative regarding current vacant Attorney positions within that office.

Member Winslow also thanked the GC Office, Ms. Potter and IT personnel, in absencia, for reporting to the Board the number of cases filed by Act as requested.

C. Legislative/Rulemaking Reports

Ms. Ross reported on legislation since the regular Public Meeting in October. On September 23, 2013, the Governor signed Assembly Bill 537 (Bonta) which provides that MMBA governing bodies must approve or reject a tentative agreement reached with an employee organization within 30 days after it is first considered at a duly noticed public meeting and also allows court proceedings to compel arbitration of UPCs that are subject to deferral to binding arbitration under an MOU between the parties.

On October 13, 2013, the Governor vetoed Assembly Bill 1263 which would have established a hybrid form of collective bargaining for medical interpreters who serve low-income, Limited English Proficiency patients who receive health care services under Medi-Cal. Assembly Bill 1263 now joins other bills PERB has been closely tracking this year—Assembly Bill 616 (Bocanegra) and Assembly Bill 641 (Rendon)—as two-year bills that failed their deadlines to make it out of the fiscal committees and should be revived in the second half of the 2013-2014 legislative session.

Regional Attorney Jonathan Levy reported on rulemaking. With the enactment and amendment of the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA or Act), reported Mr. Levy, PERB became responsible for its administration and enforcement. By the terms of this Act, PERB was granted statutory emergency rulemaking authority expiring on January 1, 2014. In anticipation and preparation for that expiration date, PERB undertook emergency rulemaking. To prepare for the emergency regulation text, PERB conducted substantial preliminary rulemaking actions which included working group meetings with interested persons, the last of which occurred on October 24, 2013, accepted written comments, and conducted a Public Meeting which occurred on November 14, 2013. Mr. Levy stated that the results of that process was Board approval to continue the emergency rulemaking process. On Friday, December 6, 2013, PERB filed the emergency regulations with the Secretary of State causing the text to become effective at that time. Concurrent with that filing, PERB filed the regulation text with the Office of Administrative Law (OAL) in order to ensure that the California Code of Regulations was updated. OAL is currently in the process of conducting a short technical review of PERB's regulation text. Mr. Levy concluded that PERB had 180 days from the date of filing to complete a certificate of compliance (or regular) rulemaking, was preparing for this rulemaking process, and would keep the Board informed of any developments in this regard.

Answering Chair Martinez's inquiry regarding the IHSSEERA rulemaking, Mr. Levy stated that as the "front and back end procedural person" he would work together with a team of PERB staff including General Counsel Murphy, Deputy General Counsel Wendi Ross, as

well as Regional Attorney Kent Morizawa, to undertake the processes for the regular rulemaking.

D. Division of Administrative Law

Chief Administrative Law Judge Shawn Cloughesy commended and thanked Ms. Potter:

All the judges think that she is great, she makes our life easy, which is the ultimate compliment for a Chief of Administration, which is making the other person's life easy. And she has been willing to explain a lot of the hard details of the administrative process, once, twice, three times to myself, if not others and so we are very thankful, sincerely thankful and we are definitely going to miss you not only just as a great Chief of Administration, but just as a good person. So, we thank you for that also.

Chief ALJ Cloughesy reported on the activities of the Division of Administrative Law and stated that the ALJ report had been distributed to the Board for its review. Mr. Cloughesy stated that the number of formals assigned and the number of proposed decisions issued was approximately the same number as reported this same time last year. Formal hearings are scheduled within three months from the date of informal settlement conference in all three regional offices. Mr. Cloughesy added that while dates had been set slightly further out in PERB's Glendale Regional Office, formal hearing dates in that office are now being set within three months of the informal conference also. Mr. Cloughesy reported that the ratio for exceptions to proposed decisions had increased to the mid-forties.

E. State Mediation and Conciliation Service

Division Chief Loretta van der Pol commended Ms. Potter:

We at the State Mediation Service have found Eileen Potter to be just an absolute treasure. We are going to miss her so much. She has been such a lifesaver for us.

Ms. van der Pol reported that the State Mediation and Conciliation Service (SMCS) Division report, together with additional details, had been distributed to the Board. In October SMCS opened 86 new cases as compared to 76 for the month of November—there was an expected slight decline due to the Holidays and SMCS expected same pace for December, where the number of cases coming in was slightly lower than in the earlier part of the Fall. SMCS closed 65 cases in October as compared to 76 cases closed in November 2013. Therefore, in November, SMCS opened as many cases as were closed. Ms. van der Pol reported that at the end of October there were 126 active cases, and at the end of November, 97 active cases. With interest expressed in the number of PERB impasses (under EERA and HEERA), in particular, Ms. van der Pol stated that that information would continue to be summarized in SMCS reports. Currently, that number is low with 11 active PERB impasses in October and 10 in November. Compared to MMBA impasses, PERB impasses were 60 percent of SMCS's impasse caseload. Ms. van der Pol reported that trend should start to even out so

that they are almost 50/50 by Spring when cities and special districts wound up negotiations, as they negotiate slightly different than the school districts.

Regarding SMCS personnel matters, Ms. van der Pol reported that Annie Song-Hill, Northern California Presiding Conciliator, would retire effective tomorrow, December 13, and Michelle Keith would retire effective December 31. She stated that Gerald Fecher, a very valued, stable and even-tempered Southern California Mediator, was promoted as Presiding Conciliator on November 13. Mr. Fecher would attend PERB's Public Meeting in February for all who had not met him. Ms. van der Pol continued that Janet Jones, who was in attendance at today's Public Meeting, was SMCS's newest Mediator in Southern California, appointed effective December 18, and that Yu-Yee Wu would join SMCS Northern California staff effective January 1. SMCS also had a job offer pending to a candidate on the Central Coast and hoped to have a decision in that regard by early next week.

Ms. van der Pol reported that SMCS had conducted staff meetings on December 3 and 4, 2013, where employees were brought up to speed on the new election regulations and SMCS's new MATS Case Management System. The expected roll out date for this system is mid- to late-January. SMCS was to provide training specific to the local control funding formulas for the schools and to the affordable care act impacts which would affect bargaining for multi-year contracts. It is anticipated that that training would be conducted very soon as the January 1, 2018, effective date for the Cadillac Tax would be incorporated into any three-year agreements currently being negotiated. Ms. van der Pol stated that she had presented arbitrator information for SMCS at the National Academy of Arbitrator's Western Region Conference in November 2013. She concluded that regarding case trends, as mentioned previously, SMCS had seen a drop in new cases, but with money restored to the public sector SMCS could see a "notable uptick" in impasses by April 2014.

Motion: Motion by Member Banks and seconded by Member Huguenin that the Division of Administration, Office of the General Counsel, Legislative/Rulemaking, Division of Administrative Law, and SMCS reports be accepted and filed.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

Chair Martinez introduced two policies and also job descriptions for discussion and possible adoption at today's Public Meeting as follows:

Policy: Superior Performance Recognition Program

Member Banks stated that the Superior Performance Recognition Program would allow managers to recognize the outstanding work of either one or a group of staff in their

divisions. Currently, PERB did not have a formalized policy in this regard. Member Banks stated that it was important to note that the Superior Performance Recognition Program policy was developed by division managers in conjunction and then submitted to the Board for adoption.

Motion: Motion by Member Banks and seconded by Member Huguenin to adopt the Superior Performance Recognition Program policy.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Job Descriptions for PERB Division Managers

Chair Martinez stated the Board's intent to update and create uniform job descriptions for PERB managers.

Member Huguenin lead the discussion in this regard stating that incumbent division managers were consulted to determine whether editorial changes were appropriate to existing job descriptions. Duty statements seldom keep in line with the day-to-day tasks performed, stated Member Huguenin. The duty statements developed were available at today's Public Meeting and would be treated as a matter to be held over for PERB's Public Meeting in February for final action. This would allow for review and feedback from any interested parties. Employees newly hired at PERB could attest to the fact that performance of the job was not under a duty statement but rather a job flyer listing the desired qualifications together with a general description of the job. Together with Member Banks a subcommittee was formed, stated Member Huguenin, to address and ameliorate this problem by meeting with existing division managers for their input to update and create viable uniform job descriptions. In the best interests of the Board and its division managers, Member Huguenin asked that this matter be considered for final action at PERB's Public Meeting in February. Chair Martinez affirmed.

Policy: Respectful Workplace

Member Winslow asked that the Respectful Workplace Policy be removed from consideration by the Board at today's Public Meeting. Without objection from Members Huguenin and Banks, the policy was withdrawn stated Chair Martinez.

General Discussion

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through February 13, 2014, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

Motion: Motion by Member Huguenin and seconded by Member Winslow to recess the meeting to continuous closed session.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair